

Securities and Exchange Commission
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Chris Barnard

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- **17 CFR Parts 201, 232, 240, 242, and 249**
- **Release Nos. 34-94615; File No. S7-14-22**
- **Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities**

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rule concerning Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities.

You are proposing a set of rules (Regulation SE) and forms under Section 3D of the Securities Exchange Act of 1934 (SEA) that would create a regime for the registration and regulation of security-based swap execution facilities (SBSEFs) and address other issues relating to security-based swap (SBS) execution generally. One of the rules being proposed as part of Regulation SE would implement Section 765 of the Dodd-Frank Act, which is intended to mitigate conflicts of interest at SBSEFs and national securities exchanges that trade SBS (SBS exchanges). Other rules being proposed as part of Regulation SE would address the cross-border application of the SEA's trading venue registration requirements and the trade execution requirement for SBS.

In addition, you are proposing to amend an existing rule to exempt, from the SEA definition of "exchange," certain registered clearing agencies as well as registered SBSEFs that provide a market place only for SBS. You are also proposing a new rule that, while affirming that an SBSEF would be a broker under the SEA, would exempt a registered SBSEF from certain broker requirements. Finally, you are proposing certain new rules and amendments to your Rules of Practice to allow persons who are aggrieved by certain actions by an SBSEF to apply for review by the SEC. You are also withdrawing all previously proposed rules regarding these subjects.

Financial resources

I support your proposals, which should act to improve the robustness of SBSEFs and reduce the risk of trading disruptions on SBSEFs. However, I do not think that the proposals go far enough. We have to anticipate and work with the “tail-risk” conditions which would be expected to apply in the event of the default of a member. Default of a member would almost certainly occur in conditions of financial uncertainty and stress. Such conditions could be accompanied by reduced liquidity and funding, widening spreads, falling solvency and increasing defaults and other systemic impacts. The SBSEF would also need resources to continue operating and to satisfy the additional expectations of its members post-default. For this reason I would recommend that the proposed financial resources requirements for a SBSEF should be significantly in excess of those required “to meet its financial obligations to its members notwithstanding a default by a member creating the largest financial exposure for that organization in extreme but plausible market conditions”.¹

Yours faithfully

C.R.B.

Chris Barnard

¹ See proposed rules, 87 FR 28995 (May 11, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-05-11/pdf/2022-07850.pdf>